



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

ESTATE PLANNING BASICS

Death is inevitable – sooner or later we are all going to die. Before we do, there are some steps and planning we should take to put our affairs in order. This can be accomplished through proper and effective estate planning. The following are some introductory questions and answers on estate planning.

Q: WHAT IS MY ESTATE? Your estate consists of all the property and personal belongings you own or are entitled to possess at the time of your death. This includes real estate, personal property, cash, savings and checking accounts, stocks, bonds, automobiles, jewelry, etc. Although the proceeds of insurance policies may be considered part of your estate, a Will does not change the designated beneficiaries of an insurance policy, including Servicemembers' Group Life Insurance (SGLI); the proceeds will normally pass to the beneficiaries designated in the policy. A Will also does not change the designated beneficiaries of any financial asset; however, the money in the account goes directly to that individual when you die, bypassing probate and thereby the money is not considered part of the estate. Likewise, certain bank accounts which are payable on death, bypass probate and go directly to the beneficiary. Property owned as joint tenancy with right of survivorship does not become part of the estate and is not subject to probate; the other joint tenant will automatically get the entire property at the decedent's death. Probate is the legal process of settling the estate of a deceased person; specifically determining the validity of the Will, resolving any claims, paying debts and expenses, and distributing the decedent's property to heirs and beneficiaries.

Q: WHAT IS ESTATE PLANNING? Estate planning is a process of making decisions during your lifetime about the use, maintenance, and disposal of your property and personal belongings upon your death or disability. It provides peace of mind by knowing that your desires are recorded and your property will be disposed of as you desire. Good estate planning can entail more than a simple Will. You may decide to avoid using a Will in favor of a living trust or property held in joint tenancy with right of survivorship, such as joint bank accounts, to avoid the time and costs associated with the probate court process. From a financial standpoint, a thorough and effective estate plan minimizes any potential taxes and determines what will happen to your home, your savings and investments, your retirement plan, a business, and other property if you become disabled or die. It can also entail establishing a trust to preserve your assets for your children until they reach the age you set for distribution of the trust. If you do not prepare a Will or trust that provides decisions about your estate, it could be years before your property is awarded to your heirs, or it could be transferred to them and distributed in ways you did not intend. A coordinated estate plan considers your SGLI beneficiary designation, together with any other life insurance policy you may have. Life insurance policies can provide income for your surviving spouse, especially if he or she does not work outside the home, for disabled or elderly relatives, your children's education and upbringing, or for paying any estate taxes. From a personal standpoint, good estate planning nominates a guardianship for minor children, expresses your funeral arrangements, and it anticipates a possible incapacity and memorializes your desires regarding medical care in the event of a terminal condition or mental incompetence through the use of Advanced Medical Directives. For further information, refer to the ASA Dix Legal Section Briefs "Wills," "Testamentary Trusts," "Powers of Attorney," and "Advanced Medical Directives."

Q: DO I NEED AN ESTATE PLAN? Almost everyone does, whether or not they are rich. Estate planning can be critical to the health, security, and welfare of your loved ones. It is one way to ensure that your wishes will be carried out after you are gone or you become mentally incompetent. To decide what your personal estate plan should include, consider the following questions:

- How will the needs of my surviving spouse and children be met?
- Do I want to provide for family members or loved ones besides my spouse or children?
- How will my children's college education be paid?
- How will my burial expenses, estate settlement, taxes and other debts be paid?
- What funeral arrangements would I like?
- Will my property be divided amongst family and friends according to my wishes?
- Do I want to make gifts to my heirs before I die?
- How high will the taxes be on my estate?
- Are there strategies I can use to reduce my estate taxes?
- How will my health needs be met if I become terminally ill or mentally incapacitated?

Q: WHAT ARE ESTATE TAXES? Federal law may impose an estate tax upon the privilege of transferring property at death. This estate tax is applied to your total taxable estate. In addition to all the property disposed of by your Will, your taxable estate consists of such items as joint tenancy property and certain life insurance proceeds distributed upon death. However, property owned as "joint tenancy with right of survivorship" does not become part of the estate; the other joint tenant will automatically get the entire property when you die. As previously stated, although the proceeds of insurance policies may be considered part of your estate, a Will does not change the designated beneficiaries of an insurance policy; the proceeds will normally pass to the beneficiaries designated in the policy. If property or assets are left to a spouse who is a U.S. citizen, the federal estate tax does not apply. This is referred to as the "marital deduction" exemption. Federal estate tax also usually does not apply if property or assets are left to a charitable organization. However, the transfer of property to other individuals or organizations may be subject to federal estate taxes, depending on the value of the estate. For situations other than the marital deduction or charitable organizations, the amount an individual can leave to his or her heirs tax-free is \$2 million for 2006-2008; this amount will increase to \$3.5 million in 2009. However, in 2010, the federal estate tax will supposedly be repealed altogether. Your estate may also be subject to state estate tax.

Q: WHAT SHOULD I DO NEXT? The first step in preparing your estate plan is to discuss it with your family to determine both your and their needs and objectives.

Q: IS THERE A PROCEDURE FOR ME TO PROVIDE HELPFUL GUIDELINES CONCERNING THE ADMINISTRATION OF MY ESTATE? Yes, you can prepare a letter of instruction. A letter of instruction is a non-binding legal document containing commands, instructions, useful information, and advice concerning the administration of your estate in the event of your sickness or death. The content of the letter will differ from individual to individual, however, the following is a list of typical subjects to be addressed:

- Organ donation and location of any document that expresses this intent;
- Individuals to be notified about your death and funeral;
- Specific funeral instructions or requests. If they are detailed in another letter or your Will, state the location of the document;
- Whether you prepared a Will or trust and their location;
- Social Security and Medicare card/statements and location of the card/statements;
- Information on life insurance policies or medical, accident, and disability insurance;
- Information on pensions, retirement accounts or annuities;
- Information on property and liability insurance and any real estate holdings;

- Information on bank accounts, stocks, bonds, mutual funds, and credit cards;
- Location of important papers such as birth certificate, marriage certificate, and income tax returns;
- Information regarding debts;
- Information regarding any other items that will help those charged with the responsibility of administering your estate.

The letter of instruction should be kept with the Will and both should be stored in a safe place that is accessible to your personal representative or executor/executrix. Whether you should keep the letter with the Will in your safe deposit box depends on your state law regarding access to safe deposit boxes after death. Some states make it relatively easy for family members or the personal representative to remove certain documents, such as Wills, life insurance policies and burial instructions, from a deceased person's safe deposit box. However, other states require a court order to remove the documents. Please note that although banks or the court order will permit the Will to be removed, it may not permit the letter of instruction to be removed. The best policy is to check with your bank's official to ensure that your personal representative or executor/executrix has access to your letter of instruction, Will, and other important documents upon your death. It is also advisable to give copies of the letter of instruction to your attorney, personal representative, spouse, adult children, and/or trusted friend who could step in and handle your affairs. It should be periodically reviewed and updated.

Q: HOW CAN THE LEGAL ASSISTANCE OFFICE HELP? Your local legal assistance office may advise you on coordinating your estate planning documents – your Will, a trust, your SGLI and other insurance beneficiary designation, a power of attorney, and advance medical directives. You may find out more about estate planning generally, using the following web sites:

- <http://www.usaaedfoundation.org/>
- <http://www.freeadvice.com/>

These websites are provided for your convenience and information only, and are not an endorsement of the site, its content, or any products or services shown on the sites.

Remember, information on the aforementioned websites or the internet may not be current when you view it. Be sure to check with appropriate, knowledgeable advisors to discuss your specific circumstances. The general legal information is available to help you understand, but is not a substitute for personal legal advice from an attorney. Contact your legal assistance office if you have additional questions or desire more information.